

FILED

**IN THE CLAIMS COMMISSION OF THE STATE OF TENNESSEE
EASTERN GRAND DIVISION**

AUG 21 2009

Tennessee Claims Commission
CLERK'S OFFICE

RICKY HARRIS,

Claimant,

v.

STATE OF TENNESSEE,

Defendant.

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**Claims Commission No. 20090881
Regular Docket**

ORDER GRANTING STATE'S MOTION TO DISMISS

THIS MATTER IS BEFORE the undersigned on the Defendant's Motion to Dismiss filed June 4, 2009, the Claimant's Response filed July 22, 2009, and the Record as a whole.

Motions pending before the Tennessee Claims Commission ("the Commission") are to be decided without oral argument pursuant to Tennessee Claims Commission Rule 0310-1-1-.01(5)(a) unless otherwise ordered. There has been no order for oral argument in this matter. Further, there has been no motion by either party for oral argument. Therefore, the State's Motion is properly before the Commission and will be heard on the record.

Facts/Procedural History

The Claimant, Ricky Harris, is currently in the custody of the Tennessee Department of Correction ("TDOC") serving a life sentence imposed in 1988 for the murder of a woman in Carter County, Tennessee. Mr. Harris has also, apparently, been convicted of forgery for which he is also now serving a sentence.

In 2008, Mr. Harris had a parole hearing before the Tennessee Board of Probation and Parole ("the Board"). It appears from the documents before the Commission that Mr. Harris' application was rejected by the Board, and that he will not be eligible for another parole hearing until the passage of an additional six years.

On February 5, 2009, Mr. Harris filed a claim with the Division of Claims Administration ("the Division") seeking Eight Hundred Thousand Dollars (\$800,000.00) because of actions taken by an Assistant Attorney General and a sitting Circuit Court Judge in connection with his 2008 parole hearing. Because Mr. Harris' claim could not be decided within ninety days of its filing, on May 6, 2009, the matter was transferred from the Division to the Commission.

The Assistant Attorney General who, according to Mr. Harris, made defamatory remarks regarding him to the Board appears to have been involved with several post-conviction proceedings which Mr. Harris has previously filed. The judge who Mr. Harris claims has defamed him was the Assistant Attorney General who prosecuted the murder case against him in the late 1980's.

Mr. Harris alleges in his claim that the Assistant Attorney General and the Judge made slanderous, false, malicious, and scandalous statements which caused the denial of parole to him in 2008 with the next possibility of such relief occurring six years from that denial.

In his claim, Mr. Harris alleges that the Assistant Attorney General, acting in his "official capacity" made a "DVD" which was provided to the Board. In that DVD, the Assistant Attorney General supposedly states that Harris killed his mother-in-law, and that he has no doubt that Claimant was the perpetrator of that crime. The Assistant goes on to state in the DVD, according to Mr. Harris, that Claimant has shown no remorse for his crime; should never be released from jail; is a huge danger to society; and will kill again in order to reach his goals. Mr. Harris alleges that these statements are false and were generated with the intention of preventing the Claimant from being paroled. Harris has

not supplied the Commission with this DVD.

The Claimant goes on to state that in a letter dated June 10, 2008, to the Chairman of the Board the Assistant Attorney General made the same sort of representations regarding Mr. Harris' character and suitability for parole. This letter, according to the documents tendered as exhibits by Mr. Harris, goes on to predict that if the Claimant is released he would involve himself in "some nefarious scheme or another". He also claims the Assistant sent this letter to a newspaper in Johnson City, Tennessee, for publication on June 19, 2008.

Mr. Harris characterizes these actions as constituting both slander and libel designed to "intentionally, deliberately, and maliciously, cause harm to the claimant". Mr. Harris alleges that these actions on the part of the Assistant are criminal and in violation of Tennessee Code Annotated, Sections 39-16-402 and - 703(a)(2).

The claim then states that the Circuit Court Judge, who was the prosecutor in Mr. Harris' 1988 trial and conviction, also "acting in his official capacity" wrote to the Board and defamed Mr. Harris by stating that he was an "extremely dangerous" person and "amoral". The letter from the former prosecutor, now judge, stated that in 1987 Mr. Harris came to Elizabethton, Tennessee, where he held himself out as an international banker who was going to establish an operation in Carter County. Eventually, according to the judge's letter, the victim realized that the Claimant was engaging in fraudulent activity and consequently, Mr. Harris then abducted and killed her. This letter was likewise published in a Johnson City newspaper on June 19, 2008. As was the case with the allegations regarding the Assistant District Attorney, Claimant alleges the letter to the Board, later published, in part, in the newspaper, was deliberate, intentional, and malicious and also violative of the two criminal statutes referenced above. Again, Mr. Harris alleges that the judge "intentionally and knowingly in his official capacity as a criminal court judge" made false statements to the Board and to the public

through the print media.

The Claimant also has presented to the Commission a copy of an article from the Johnson City newspaper dated July 1, 2008, which states that eight thousand five hundred (8,500) signatures were gathered on a Petition opposing the parole of Mr. Harris. He seems to contend that the actions of the Assistant Attorney General and the former prosecutor, now Judge, inflamed public opinion in several counties of Upper East Tennessee to the extent that such a petition resulted.

In response to Mr. Harris' claim, the State filed a Motion to Dismiss pursuant to the Tennessee Rules of Civil Procedure, Rule 12.02(6). That rule, of course, provides as follows:

12.02. How Presented. – Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion in writing:

...
(6) failure to state a claim upon which relief can be granted,....

In support of its Motion, the State argues that Mr. Harris' claim seems to be based on Tennessee Code Annotated, Section 9-8-307(a)(1)(R), which provides as follows:

9-8-307. Jurisdiction Claims Waiver of actions Standard for tort liability Damages Immunities Definitions Transfer of claims.

(a) (1) The commission or each commissioner sitting individually has exclusive jurisdiction to determine all monetary claims against the state based on the acts or omissions of state employees, as defined in 8-42-101(3), falling within one (1) or more of the following categories:

...
(R) Claims for libel and/or slander where a state employee is determined to be acting within the scope of employment;....

The State argues that unless Mr. Harris can show that one of its employees, acting within the scope of his or her employment, committed a libel or slander, it remains, per Article I, Section 17 of the Tennessee Constitution, immune from suit. (See also, in connection with the State's argument,

Conley v. State, 141 S.W.3d 591, 597 (Tenn. 2004).^{1 2 3}

The State argues that the statements sent to the Board by both individuals were privileged since a parole hearing is a judicial proceeding and statements made during the course of such an event are absolutely privileged. See *Lambdin Funeral Service, Inc. v. Griffith*, 559 S.W.2d 791, 792 (Tenn. 1978). This is true, the State says, even though the objectionable statements are “malicious, false, known to be false or against a stranger to the proceeding”. *Strong-Tie Co., Inc. v. Stewart, Estes, and Donnell*, 233 S.W.3d 18, 23 (2007). According to the State, there are two requirements for such a privilege. First, the statements must have been made during the course of a judicial proceeding; and secondly, they must be relevant and pertinent to the issues involved in such a proceeding. See *Lambdin* at 792. This privilege applies, according to the State, not only in judicial proceedings but also in hearings conducted by boards and commissions. *Id.* Additionally, the State argues, the privilege applies to documents filed during the course of such proceedings even though statements contained in such filings turn out later to be false. *Langford v. Vanderbilt University*, 318 S.W.2d 568, 574 (Tenn. Ct. App. 1958).

According to the State, parole hearings are, in fact, judicial proceedings pursuant to Tennessee Code Annotated, Sections 40-35-503(d)(1) and 40-28-115(c).

The State also argues the statements made by both individuals in this case were relevant and pertinent to the issues before the Board since that body may grant a prisoner parole only if “there is [a]

¹ The State also contends that Mr. Harris’ claim is not viable under Tennessee Code Annotated, Section 9-8-307(a)(1)(N) since a prisoner has no right to parole under Tennessee law or regulation. (See Tenn. Code Ann. §§ 40-28-115(a) and -117(a).

² The State also argues that Mr. Harris has no private cause of action based on an alleged violation by an Assistant District Attorney General and a sitting Judge of Tennessee Code Annotated of Sections 39-16-402 and -703, citing *Buckner v. Carlton*, 623 S.W.2d 102 (Tenn. Ct. App. 1981).

³ The State also asserts that if Mr. Harris’ claim is one for slander based upon the DVD testimony submitted by the Assistant District Attorney, that claim is time barred pursuant to Tennessee Code Annotated, Section 28-3-103.

reasonable probability that the prisoner, if released, will live and remain at liberty without violating the law, and that the prisoner's release is not incompatible with the welfare of society". (See Tenn. Code Ann. § 40-28-117(a).)

The State argues that the Board, in making its decision, may consider both the views of the trial judge and prosecutor involved in the original prosecution, as well as the views of various groups, including members of the community, victims or their families, and other "interested persons". (Tenn. Comp. R. and Regs. 1100-1-1-.06(1) (2009).)

Further, in making its determinations, the State points out that the same Rules and Regulations permit the Board to consider observations on suitability for release from court officials, law enforcement personnel, and other interested community members. (Tenn. Comp. R. and Regs. 1100-1-1-.06(2)(c) (2009).) In fact, the State argues, the Board must notify the office of the prosecuting District Attorney General and sentencing court in the judicial district where the trial and conviction took place (or their successors), of an inmate's parole eligibility hearing. (Tenn. Code Ann. § 40-35-503(e).)

In addition to these considerations, the State goes on to point out that the Assistant District Attorney General and judge did not commit libel. Libel, according to the State, requires (1) a published statement; (2) knowledge that the statement was false and defamatory; (3) and finally, that the statement was made with reckless disregard for its truth or with negligence in failing to ascertain the truth of the statement. *Sullivan v. Baptist Mem'l Hosp.*, 995 S.W.2d 569, 571 (Tenn. 1999). Further, defamation must have resulted in injury to a person's character or reputation and actual damages must be sustained and proved. *Davis v. The Tennessean*, 83 S.W.3d 125, 128 (Tenn. Ct. App. 2001). The State argues that the Claimant bears the burden of proof of showing defamation and that if the allegedly damaging words are basically true, they are not actionable; and that "[w]here there

is no false representation of fact, one may not recover in actions for defamation merely upon the expression of an opinion which is based upon disclosed, non-defamatory facts, no matter how derogatory it may be". *Windsor v. The Tennessean*, 654 S.W.2d 680, 685 (Tenn. Ct. App. 1983). Here, the State contends, both the Assistant District Attorney General and the Circuit Court Judge expressed opinions based upon the fact that Mr. Harris has been convicted of murder and forgery.

Additionally, the State argues that there has been no damage to Mr. Harris' reputation since he has been convicted of two serious felonies and therefore, is "libel proof". Because of his convictions, the State argues that Mr. Harris does not have "good standing and [a] reputation for good character to begin with". *Davis* at 125.

In response to the State's Motion, Mr. Harris reiterates some of his earlier arguments and cites Tennessee Code Annotated, Section 9-8-307(h) for the proposition that although employees and officials of the state are immune from suit for acts or omissions within the scope of their office or employment, they are not immune for "willful, malicious, or criminal acts done for personal gain".

Mr. Harris also argues that qualified immunity gives government officials discretionary function immunity "unless their conduct violates clearly established statutory or constitutional rights of which a reasonable person would have known".

Decision.

In this matter, as previously stated, the State has filed a Motion to Dismiss pursuant to the Tennessee Rules of Civil Procedure, Rule 12.02(6). In applying this Rule, appellate courts in Tennessee have described the procedure, when this rule is invoked as follows:

A motion to dismiss a complaint for failure to state a claim for which relief can be granted tests the legal sufficiency of the plaintiff's pleading. *Givens v. Mullikin*, 75 S.W.3d 383, 406 (Tenn. 2002); *Trau-Med of Am., Inc. v. Allstate Ins. Co.*, 71 S.W.3d 691, 696 (Tenn. 2002). The motion requires the court to review the complaint alone,

Mitchell v. Campbell, 88 S.W.3d 561, 564 (Tenn. Ct. App. 2002), and to look to the complaint's substance rather than its form. *Kaylor v. Bradley*, 912 S.W.2d 728, 731 (Tenn. Ct. App. 1995). Dismissal under Tenn. R. Civ. P. 12.02(6) is warranted only when the alleged facts will not entitle the plaintiff to relief, *Crews v. Buckman Labs. Int'l, Inc.*, 78 S.W.3d 852, 857 (Tenn. 2002) or when the complaint is totally lacking in clarity and specificity. *Dobbs v. Guenther*, 846 S.W.2d 270, 273 (Tenn. Ct. App. 1992).

A Tenn. R. Civ. P. 12.02(6) motion admits the truth of all the relevant and material factual allegations in the complaint but asserts that no cause of action arises from these facts. *Davis v. The Tennessean*, 83 S.W.3d 125, 127 (Tenn. Ct. App. 2001); *Pendleton v. Mills*, 73 S.W.3d 115, 120 (Tenn. Ct. App. 2001). Accordingly, courts reviewing a complaint being tested by a Tenn. R. Civ. P. 12.02(6) motion must construe the complaint liberally in favor of the plaintiff by taking all factual allegations in the complaint as true, *Stein v. Davidson Hotel*, 945 S.W.2d 714, 716 (Tenn. 1997), and by giving the plaintiff the benefit of all the inferences that can be reasonably drawn from the pleaded facts. Robert Banks, Jr. & June F. Entman, Tennessee Civil Procedure § 5-6(g), at 254 (1999). *Cavnar v. State*, 2003 WL 535915, *4 (Tenn. Ct. App.).

Mr. Harris is currently in the custody of TDOC following a first degree murder conviction in Carter County in 1988. Apparently, Mr. Harris first became eligible for parole consideration in 2008 after having served twenty years of his sentence.

Mr. Harris has filed an eight hundred thousand dollar (\$800,000.00) claim against the State of Tennessee alleging that he was defamed by the contents of a DVD and letters sent by public officials to the Board and later published in a Johnson City newspaper.

First, Mr. Harris contends that an Assistant District Attorney General, who has handled several post-conviction relief petitions he has filed, sent a DVD to the Board for consideration at Mr. Harris' hearing. He contends that the DVD contained "slanderous, false, malicious, and scandalous words". Additionally, this Assistant District Attorney General from Carter County also submitted a letter to the Board vigorously opposing Mr. Harris' release on parole at this time. According to documents in the

file before the Commission, Mr. Harris has filed several post-conviction relief petitions which this Assistant District Attorney General has handled on behalf of the State. Therefore, the Assistant stated in his letter to the Board that he had “become very familiar with the case”.

Further, in connection with Mr. Harris’ parole hearing, a sitting Circuit Court Judge who prosecuted Mr. Harris in his murder trial in 1988 submitted a letter to the Board strongly opposing the parole of Mr. Harris at this time.

Eventually, the contents of these letters were discussed in articles published in the *Johnson City Press* on June 19 and July 1, 2008. The letter prepared by the sitting Circuit Court Judge is not in this record. However, the letter from the Assistant District Attorney General to the Chairman of the Board of Probation and Parole is contained in the file. The letter does not show that it was copied or provided to the *Johnson City Press* by the Assistant District Attorney General.⁴ In fact, Claimant has presented no proof regarding how the newspaper became aware of these letters.

Conceivably, Mr. Harris’ complaint alleges the Commission has jurisdiction under either Tennessee Code Annotated, Section 9-8-307(a)(1)(N) or (R). Those sections read as follows:

9-8-307. Jurisdiction Claims Waiver of actions Standard for tort liability Damages Immunities Definitions Transfer of claims.

(a) (1) The commission or each commissioner sitting individually has exclusive jurisdiction to determine all monetary claims against the state based on the acts or omissions of state employees, as defined in 8-42-101(3), falling within one (1) or more of the following categories:

(N) Negligent deprivation of statutory rights created under Tennessee law, except for actions arising out of claims over which the civil service commission has jurisdiction. The claimant must prove under this subdivision (a)(1)(N) that the general assembly expressly conferred a private right of action in favor of the claimant against the

⁴ The articles from the *Johnson City Press* and the Assistant District Attorney General’s letter to the Board have been submitted to the Commission by Mr. Harris. The admission of the contents of those letters was not opposed by the State.

state for the state's violation of the particular statute's provisions;

...
(R) Claims for libel and/or slander where a state employee is determined to be acting within the scope of employment;....

In essence, Mr. Harris claims he has been defamed by the actions taken by the Assistant District Attorney General and the sitting Circuit Court Judge in connection with his first application for parole.^{5 6}

In Tennessee, in order to establish a prima facie case of defamation, the Claimant must show (1) that a party has published a statement; (2) that the statement was made with the knowledge that it was false and defamatory of another person; or (3) that the statement was made with reckless disregard for its truth or with negligence in the publisher's failure to ascertain the truth or falseness of the statement. *Sullivan v. Baptist Mem'l Hosp.*, 995 S.W.2d 569, 571 (Tenn. 1999).

In support of his defamation claim, Mr. Harris cites two criminal statutes, Tennessee Code Annotated, Sections 39-16-402 and – 703(a)(2), which provide respectively as follows:

39-16-402. Official misconduct. – (a) A public servant commits an offense who, with intent to obtain a benefit or to harm another, intentionally or knowingly:

(1) Commits an act relating to the servant's office or employment that constitutes an unauthorized exercise of official power;

(2) Commits an act under color of office or employment that exceeds the servant's official power;

(3) Refrains from performing a duty that is imposed by law or that is clearly inherent in the nature of the public servant's office or employment;

(4) Violates a law relating to the public servant's office or employment; or

(5) Receives any benefit not otherwise authorized by law.

⁵ Mr. Harris, according to his filings will not be eligible for parole consideration for another six years.

⁶ Mr. Harris' complaint appears to allege both written defamation, or libel, and oral defamation, or slander. Although the State does not concede that the DVD sent to the Board constituted slander, it argues that such an action would be barred by the six month slander statute of limitation set out in Tennessee Code Annotated, Section 28-3-103. However, there is no evidence before the Commission showing when the DVD was made or reviewed by any person in connection with Mr. Harris' parole hearing. Therefore, the Commission will assume for statute of limitations purposes, Mr. Harris' claim was timely filed.

(b) For purposes of subdivision (a)(2), a public servant commits an act under color of office or employment who acts or purports to act in an official capacity or takes advantage of the actual or purported capacity.

(c) It is a defense to prosecution for this offense that the benefit involved was a trivial benefit incident to personal, profession, or business contact, and involved no substantial risk of undermining official impartiality.

(d) An offense under this section is a Class E felony.

(e) Charges for official misconduct may be brought only by indictment, presentment or criminal information; provided, that nothing in this section shall deny a person from pursuing other criminal charges by affidavit of complaint.

....

39-16-703. Aggravated perjury. – (a) A person commits an offense who, with intent to deceive:

(1) Commits perjury as defined in § 39-16-702;

(2) The false statement is made during or in connection with an official proceeding; and

(3) The false statement is material.

(b) It is no defense that the person mistakenly believed the statement to be immaterial.

(c) Aggravated perjury is a Class D felony.

However, Mr. Harris' reliance on these two criminal code statutes is misplaced. First, from what is before the Commission, there is absolutely no evidence that either the Assistant District Attorney General or the Judge have committed any criminal act prohibited by these Code sections. Secondly, Tennessee Code Annotated, Section 9-8-307(a)(1)(N) gives the Commission jurisdiction of cases where there has allegedly been a negligent deprivation of a statutory right. However, the Claimant must show that the legislature in passing the underlying statute expressly conferred a private civil right of action in favor of an individual for such an alleged statutory violation.

Mr. Harris has shown no evidence or presented any argument whatsoever of any intent by the legislature, in enacting the two criminal code provisions set out above, to confer a private civil right of

action in favor of an individual such as himself in the event of an alleged violation of either criminal code provision. Therefore, these criminal code sections do not give this Commission jurisdiction under subsection N of the statute over Mr. Harris' claim. See *Buckner v. Carlton*, 623 S.W.2d 102, 105 (Tenn. Ct. App. 1981).

As has been said many, many times, the Tennessee Claims Commission Act – since it is in derogation of the common law which grants the state absolute sovereign immunity – must be strictly and narrowly construed. See *State ex Rel Allen v. Cook*, 106 SW2d 858, 860 (1937); *Stokes v. University of Tennessee*, 737 SW2d 545, 547, (Tenn. Ct. App., 1987).

Therefore, applying the our statute as written, Mr. Harris has no cause of action under these two criminal code provisions since there is no language in these statutes giving Mr. Harris, or for that matter any person, a private civil right of action even if he were able to show that the Judge and Assistant District Attorney General had violated these provisions.

The real thrust of the State's defense, and a defense of overwhelming importance, is the State's contention that these statements made by the Assistant Attorney General and the former prosecutor, now a judge, were legitimate statements made in the course of a judicial proceeding and therefore, privileged because of "the public's interest in and need for judicial process free from the fear of a suit for damages for defamation or invasion of privacy based on statements made in the course of a judicial or quasi-judicial proceeding". *Lambdin Funeral Service, Inc. v. Griffith*, 559 S.W.2d 791, 792 (Tenn. 1978). The State's position clearly contemplates that public officials, involved in the very serious business of considering parole for persons convicted of crimes – in this case first degree murder – should be free to have input to the parole process without fear that they will be sued for fulfilling the responsibilities of their office. Clearly, the General Assembly has deemed the input of such officials as being important. For example, Tennessee Code Annotated, Section 40-35-503(e) provides that

prior to a hearing on a parole application, the Board “shall notify the district attorney general and the sentencing court or their successors of the eligibility hearing in the manner provided for in § 40-28-107(c)”. Likewise, Board Rule 1100-1-1-.06(1)(d) includes “[t]he views of the appropriate trial judge and the district attorney general who prosecuted the case” as valid considerations at a parole hearing. In this case, the District Attorney General who prosecuted Mr. Harris in 1988 is now a sitting Circuit Judge in the judicial district which includes the court where Mr. Harris was prosecuted and convicted. Additionally, the Assistant District Attorney General, whose actions Mr. Harris complains of, is not only familiar with Mr. Harris’ case because he has defended post-conviction relief actions filed by the Claimant but also is an successor Assistant District Attorney General in the office which originally prosecuted the Claimant in 1988.

Therefore, the statements made by these individuals, as employees of the State, have been deemed relevant by both the General Assembly and the Board in determining whether a prisoner should be granted parole. Those statements are therefore “absolutely privileged and cannot be the predicate for liability in an action for libel, slander, or invasion of privacy”. *Lambdin Funeral Service, Inc.* at 792.

Although the Board is obviously not a court, the General Assembly also has made it clear that its actions are deemed “a judicial function”; therefore, affording to it the “absolute privilege” applicable in judicial proceedings. (Tenn. Code Ann. § 40-28-115(c); *Lambdin v. Griffith* at 792.)⁷

In a relatively recent case, the Supreme Court of this state described this privilege in very strong terms. In *Simpson Strong-Tie Company, Inc. v. Stewart, Estes, and Donnel*, 232 S.W.3d 18

⁷ This privilege also has been held in Tennessee to also extend “to papers filed in court”. *Langford v. Vanderbilt University*, 318 S.W.2d 568, 574 (Tenn. Ct. App. 1958).

(Tenn. 2007), the Court wrote that,

In more recent cases, this Court has found that defamatory statements by a judge, witness, counsel, or party ‘made in the course of a judicial proceeding, if pertinent or relevant, are absolutely privileged, and this is true regardless of whether they are malicious, false, known to be false, or against a stranger to the proceeding’. *Id.* quoting *Jones v. Trice*, 360 S.W.2d 48, 54 (Tenn. 1962).

Finally, the State has cited *Davis v. The Tennessean*, 883 S.W.3d 125, 130 (Tenn. Ct. App. 2000) for the proposition that Mr. Harris is libel proof since he was convicted previously for forgery and with regard to the 1988 Carter County conviction, of first degree murder. Convictions for forgery, and certainly for first degree murder, have rendered Mr. Harris notorious and doubtlessly have destroyed any good name he may previously have enjoyed. See *Id.* at 128. As the State argues, any reputation he may now have is virtually valueless and therefore, possible damages, whether based on a libel or slander claim, are in all likelihood not recoverable.

The Commission FINDS that any statements the Assistant District Attorney General and sitting Circuit Court Judge made in connection with Mr. Harris’ parole hearing were privileged since they were made during what is considered a judicial proceeding and clearly were relevant to considerations the Board takes into account in granting or denying parole. See *Lambdin Funeral Service, Inc.* at 792. In this case, the assistant district attorney general and the sitting trial judge did not make false statements of fact. Rather, the opinions they presented to the Board were based upon their interactions with the Claimant during the course of his 1988 trial and the subsequent post-conviction matters. Their opinions have clearly been designated by the Legislature and by the Board as important in making an informed decision on Mr. Harris’ application for parole. They do not represent falsified statements of fact published with a reckless disregard for the truth or statements negligently made without ascertaining their truth. These two public officials’ opinions were based on their dealings with

the Claimant over a period of twenty years and they are entitled to express those opinions in a proceeding addressing the issue of whether or not an individual – such as Mr. Harris – convicted of taking a life should be released into society.

Therefore, the Commission FINDS that under Rule 12.02(6) of the Tennessee Rules of Civil Procedure, Mr. Harris' claim, taking all allegations set out therein as true, is not viable in light of the fact that the opinions were made in the course of a judicial proceeding in which both the Legislature and the Board invited both the District Attorney General and the sitting Circuit Court Judge to participate and contribute, thereby rendering such statements privileged.

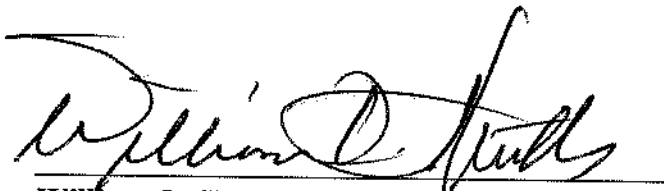
Parole release is not a privilege. (See Tenn. Code Ann. § 40-35-503(b).) The communication of the opinions of Assistant District Attorney General Baldwin and Judge Brown are a valid part of the considerations taken into account by the Board in deciding whether parole release should be granted and should never be fettered by claims such as this which attempt to intimidate those involved in the parole process.

Finally, in proceedings before the Commission, there is only one defendant, the State of Tennessee, whose liability is based upon acts or omission of its employees. The Tennessee Claims Commission Act is clear that the State is not liable for the willful, malicious, or criminal acts of its employees. (See. Tenn. Code Ann. § 9-8-307(b).) While the Commission FINDS no "willful, malicious, or criminal acts" whatsoever were committed by the Assistant District Attorney General and the Circuit Court Judge named in this proceeding by Mr. Harris, the State, if such actions were shown, would not be liable.

For the reasons stated herein, the Commission FINDS the State's Motion to Dismiss is

appropriate and is GRANTED. As such, this claim must be DISMISSED.

ENTERED this the 17th day of August, 2009.



William O. Shults, Commissioner

P.O. Box 960

Newport, TN 37822-0960

CERTIFICATE OF SERVICE

I certify that a true and exact copy of the foregoing document has been forwarded to:

**Ricky Harris, #121445
1045 Horsehead Lane
Pikeville, TN 37367**

**Stephanie A. Bergmeyer, Esq.
Office of the Attorney General
P.O. Box 20207
Nashville, TN 37202-0207**

This the 21 day of August, 2009.

